

Message Text

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ACTION DLOS-06

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DOT-00 EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00

H-02 INR-07 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05

NSF-01 OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15

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TO SECSTATE WASHDC 1227

INFO AMEMBASSY MOSCOW

AMEMBASSY SEOUL

USUN NEW YORK 2225

C O N F I D E N T I A L SECTION 1 OF 2 TOKYO 11474

USUN FOR USDEL LOS

E.O. 11652: GDS

TAGS: EFIS, PLOS, JA

SUBJECT: PREPARATIONS FOR AUGUST U.S. -JAPAN FISHERY NEGOTIATIONS

1. BEGIN SUMMARY. AT AUGUST U.S.-JAPAN FISHERY NEGOTIATIONS, GOJ WILL LINK CONCESSIONS ON LEGAL ISSUES WITH SUBSTANTIVE DISCUSSION OF THE FUTURE OF JAPANESE FISHERIES AND WILL INSIST ON SUBSTANTIALLY BETTER TREATMENT THAN SOVIET UNION AND NEWCOMERS TO NORTH PACIFIC FISHING. GOJ WILL SEEK FORMULAS FOR MINIMAL RECOGNITION OF U.S. JURISDICTION WHICH MAY INCLUDE A SYSTEM OF GOJ-ISSUED PERMITS WHICH MEET U.S. REQUIREMENTS AND WOULD BE ACCEPTED AS U.S. PERMITS FOR ENFORCEMENT PURPOSES.

2. EMBASSY ESTIMATES, REPORTED BELOW, OF PROBABLE GOJ POSITIONS AT AUGUST U.S.-JAPAN FISHERY NEGOTIATIONS ARE
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BASED ON RECENT CONVERSATIONS WITH GOVERNMENT AND PRIVATE

SECTOR REPRESENTATIVES, INCLUDING A MEETING BETWEEN CHARGE AND FISHERY AGENCY DIRECTOR-GENERAL UCHIMURA. (FINAL GOJ PREPARATIONS FOR TALKS BEGAN WITH JULY 27 JOINT MEETING OF RULING LIBERAL DEMOCRATIC PARTY'S FOREIGN AFFAIRS AND FISHERIES SECTIONS AND WILL INCLUDE CONSULTATIONS OVER THE NEXT TWO WEEKS BETWEEN THE MINISTRIES OF FOREIGN AFFAIRS AND AGRICULTURE).

3. JAPANESE OBJECTIVE: TO SECURE ASSURANCES OF A SATISFACTORY CATCH IN THE FORTHCOMING U.S. FISHERY CONSERVATION ZONE AND TO GAIN DEMONSTRABLY BETTER TREATMENT FROM THE U.S. THAN OTHER FISHING STATES, PARTICULARLY THE SOVIET UNION, WHILE MAKING MINIMUM LEGAL CONCESSIONS RECOGNIZING U.S. FISHERY MANAGEMENT AUTHORITY IN A FORM WHICH DOES LEAST DAMAGE TO JAPANESE INTERESTS VIS-A-VIS OTHER COASTAL STATES AND WHICH IS TOLERABLE TO THE DIET AND PUBLIC OPINION.

4. U.S. OBJECTIVES: (A) TO GAIN JAPANESE ADHERENCE TO A GIFA WHICH IS ACCEPTABLE TO CONGRESS (OR, FAILING THIS, TO MAKE SUFFICIENT PROGRESS IN THE NEGOTIATIONS TO CREATE A STRONG CASE FOR AMENDMENTS TO THE LAW WHICH WOULD ENABLE CONCLUSION OF AN AGREEMENT WITH JAPAN.) (B) TO PREVENT THE FISHERIES ISSUE FROM DAMAGING OUR OVERALL RELATIONS WITH JAPAN.

5. COURSE OF THE NEGOTIATIONS: JAPANESE DELEGATES WILL CONTINUE TO ARGUE, AS IN THE JUNE TALKS, THAT U.S. FISHERY ACT IS CONTRARY TO INTERNATIONAL LAW BUT AT THE SAME TIME WILL MAKE A CASE FOR PREFERENTIAL TREATMENT WITHIN THE TERMS OF THE LAW. THE JAPANESE SEE NEGOTIATIONS AS HAVING TWO PARTS, "LEGAL" AND "SUBSTANCE", AND WILL RESERVE ON LEGAL ISSUES UNTIL DISCUSSION OF FUTURE OF JAPANESE FISHERIES HAS BEEN COMPLETED TO THEIR SATISFACTION. RIGHTLY OR WRONGLY, JAPANESE OFFICIALS WHO PARTICIPATED IN RECENT TALKS WITH USG IN WASHINGTON AND MONTREAL BELIEVE THAT U.S. IS TAKING MORE INFLEXIBLE STANCE THAN THE NEW LAW REQUIRES. THIS MAY REFLECT CONFUSION AND/OR FRUSTRATION RE THE LAW ITSELF AND MISTAKEN BELIEF THAT U.S. OFFICIALS HAVE

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THE SAME FLEXIBILITY IN ADMINISTERING LAWS THAT TRADITION HAS ACCORDED TO JAPANESE BUREAUCRATS.

6. HOPE SEEMS TO REMAIN THAT HIGH POLICY-LEVEL U.S. OFFICIALS, WHO HAVE DEEP CONCERN FOR OVERALL U.S.-JAPAN RELATIONS AND A SPECIAL UNDERSTANDING OF THE IMPORTANCE OF FISHERIES TO JAPAN, CAN BE INDUCED TO INTERVENE AND EFFECT MAJOR COMPROMISES. THUS THE U.S. SIDE MAY STILL

HAVE SOME WORK TO DO IN MAKING CLEAR WHERE THE LAW AND ITS ADMINISTRATION CANNOT BE MODIFIED OR ENFORCEMENT DELAYED. AT SAME TIME, EMBASSY BELIEVES IT WOULD BE USEFUL FOR U.S. DEL TO MAKE SPECIAL EFFORT EARLY IN THE TALKS TO POINT UP AREAS WHERE POSSIBILITIES FOR FLEXIBLE ARRANGEMENTS EXIST AND TO DEMONSTRATE THAT THE U.S. VIEWS THE FISHERIES PROBLEM IN A BROAD CONTEXT WHICH INCLUDES THE NORTH ASIAN SECURITY SITUATION. (EMBASSY STRONGLY URGES THAT SENIOR EA BUREAU OFFICIAL PARTICIPATE IN NEGOTIATIONS TO ASSURE THE JAPANESE THAT GENERAL U.S. FOREIGN POLICY CONCERNS ARE GETTING DUE ATTENTION.)

7. THE ATMOSPHERE OF TALKS AND JAPANESE SENSE OF ENGAGING IN DIALOGUE COULD BE ENHANCED BY USING JAPANESE DRAFT PROVISIONS AS MUCH AS POSSIBLE AND ENCOURAGING THEM TO FIND NEW FORMULATIONS AND LANGUAGE TO BRIDGE THE DIFFICULTIES.

8. LEGAL ISSUES: GOJ WILL CONTINUE TO ASSERT THAT THERE IS A CONSTITUTIONAL REQUIREMENT TO SUBMIT GIFA TO DIET IF IT IS TO GO INTO EFFECT BEFORE THE LOS CONFERENCE FORMALLY ESTABLISHES 200-MILE COASTAL STATE FISHERY JURISDICTION AS A PRINCIPLE OF INTERNATIONAL LAW. JAPANESE MAY SEARCH FOR A MIDDLE GROUND ON WHICH THEY CAN RECOGNIZE U.S. FISHERY MANAGEMENT AUTHORITY (AS THEY DO NOW, FOR EXAMPLE, FOR SALMON EAST OF THE 175 DEGREE WEST ABSTENTION LINE) IN A FASHION WHICH STOPS SHORT OF ACKNOWLEDGEMENT OF EXCLUSIVE U.S. FISHERY JURISDICTION. IN THIS REGARD, USG ISSUANCE OF FISHING PERMITS DIRECTLY TO JAPANESE VESSELS AND U.S. COURT

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C O N F I D E N T I A L SECTION 2 OF 2 TOKYO 11474

JURISDICTION OVER JAPANESE NATIONALS, AS MATTERS WHICH GO BEYOND THE MERE TECHNIQUES OF FISHERIES MANAGEMENT, WILL POSE PARTICULARLY SERIOUS DIFFICULTIES FOR THE GOJ. JAPANESE ARE ESPECIALLY ANXIOUS TO AVOID ACCEPTING FORMS OF U.S. JURISDICTION OVER JAPANESE NATIONALS WHICH JAPAN WOULD BE HESITANT TO IMPOSE ON SOVIET NATIONALS IN JAPAN'S COASTAL FISHING AREA. JAPANESE OFFICIALS BELIEVE U.S. WILL HAVE TO MAKE SOME CONCESSIONS ON THESE POINTS BOTH LEGALLY AND IN PRACTICAL TERMS. THE QUESTION OF COURT JURISDICTION IS EXPECTED TO ENCOUNTER THE MOST RESISTANCE IN THE DIET, WHERE, IN ADDITION TO THE OPPOSITION, A NUMBER OF LDP MEMBERS FIRMLY OPPOSE THE IMPLIED LOSS OF JAPANESE SOVEREIGNTY. CONCERNING PERMITS, ONE SUGGESTION IS AN ARRANGEMENT VIA A LEGAL FICTION WHEREBY PERMITS ISSUED BY THE GOJ CAN BE RECOGNIZED AS U.S. PERMITS FOR ENFORCEMENT PURPOSES. THE JAPANESE ALSO BELIEVE THAT
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THE PERMIT SYSTEM MAY BE TECHNICALLY IMPOSSIBLE TO ADMINISTER EXACTLY AS WRITTEN IN THE LAW (UNLESS ITS REAL PURPOSE IS TO PREVENT FISHING THAN TO PERMIT IT IN AN ORDERLY MANNER). THE LENGTH OF TIME REQUIRED FOR APPROVAL, NON-TRANSFERABILITY (THERE ARE FREQUENT CHANGES IN OWNERSHIP OF JAPANESE FISHING VESSELS), AND THE SETTING OF QUOTAS AND FISHING RESTRICTIONS INDIVIDUALLY FOR EACH BOAT (INCLUDING EACH CATCHERBOAT IN A FACTORYSHIP FLEET) HAVE BEEN CITED AS EXAMPLES OF HIGHLY UNECONOMIC PROVISIONS IN THE LAW FOR WHICH PRACTICAL SOLUTIONS WILL HAVE TO BE FOUND. GOJ OFFICIALS BELIEVE REASONABLE ACCOMMODATION CAN BE REACHED ON FEES.

9. EMBASSY COMMENT: PERMIT AND FEE SYSTEMS, WHICH WILL REQUIRE A NUMBER OF IMPLEMENTING REGULATIONS PROMULGATED WITHIN THE EXECUTIVE BRANCH, APPEAR TO US TO BE THE AREA WHERE THERE IS GREATEST POSSIBILITY

FOR ACCOMMODATIONS FROM OUR SIDE WHICH WILL OFFER JAPANESE FISHING INDUSTRY ASSURANCES OF A STABLE BUSINESS ENVIRONMENT IN WHICH IT CAN PLAN AHEAD AND OPERATE EFFICIENTLY. END COMMENT.

10. QUOTAS: JAPANESE IN BOTH GOVERNMENT AND INDUSTRY HAVE MADE IT CLEAR THAT A SATISFACTORY QUOTA LEVEL IS THE KEY TO GETTING A POLITICAL DECISION TO OVERRULE THE LEGALISTS AND ACCEPT THE NEW U.S. REGIME. JAPAN, WHILE APPARENTLY WILLING TO ACCEPT LANGUAGE INDICATING THAT U.S. UNILATERALLY DETERMINES THE QUOTA, WILL SEEK U.S. COMMITMENT TO CONTINUE FULL DRESS BILATERAL NEGOTIATIONS, INCLUDING SCIENTIFIC SESSIONS, AS HAVE BEEN CONDUCTED IN THE PAST AND MAY ALSO PRESS FOR INCLUSION OF CLAUSE, SIMILAR TO LOS TEXT, OBLIGATING U.O G TO RENOUNCE MEASURES WHICH WOULD CAUSE DISLOCATION TO JAPANESE FISHING INDUSTRY AND SUDDEN LOSS OF LIVELIHOOD TO FISHERMEN TRADITIONALLY DEPENDENT ON U.S. FISHERY ZONE. JAPANESE WILL ARGUE THAT THEY HAVE BEEN CONSCIENTIOUS FISHERY CONSERVATIONISTS, COOPERATING WITH THE U.S. IN THIS ENDEAVOR FOR 25 YEARS, AND THAT JAPAN'S ACHIEVEMENTS AS DISCOVERER AND DEVELOPER OF RESOURCES, ITS RECORD IN SCIENTIFIC RESEARCH AND ENFORCEMENT, AND ITS ROLE AS CONFIDENTIAL

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AMERICA'S ALLY AND MOST STABLE PARTNER IN THE PACIFIC PLACE JAPAN ON A SEPARATE AND HIGHER "MORAL" PLANE FROM THE OTHER NORTH PACIFIC FISHING STATES--A SITUATION WHICH MUST BE RECOGNIZED BY QUOTAS AND FISHING CONDITIONS WHICH ARE ACCEPTABLE IN AN ABSOLUTE SENSE AND ALSO CLEARLY MORE FAVORABLE THAN THOSE ENJOYED BY THE SOVIETS AND THE LATECOMERS TO NORTH PACIFIC FISHING. THE SOVIET ISSUE, WE HAVE BEEN WARNED, IS PARTICULARLY SENSITIVE, AND U.S. TREATMENT OF JAPAN IN SAME MANNER AS SOVIETS COULD LEAVE GOJ POLITICAL LEADERSHIP IN AN UNTENABLE POSITION VIS-A-VIS ITS ANTI-AMERICAN OPPONENTS. GOJ ALSO CAN BE EXPECTED TO MAKE A POINT OF ITS VOLUNTARY CUTBACK OF JAPAN'S 1976 POLLACK CATCH BY 100,000 METRIC TONS AND TO ASK FOR AN APPROPRIATE REASSESSMENT OF THE CONDITION OF THE STOCK. QUOTAS, IF RELATIVELY LARGE, COULD MAKE LEGAL CONCESSIONS EASIER FOR JAPANESE. SMALL QUOTAS WOULD SERIOUSLY COMPLICATE AGREEMENT ON LEGAL PROVISIONS ON ANY TERMS.

11. INTERIM ARRANGEMENTS: GOJ IS QUITE CERTAIN THAT IT WILL BE IMPOSSIBLE TO HAVE A NEW AGREEMENT IN PLACE BY MARCH 1, 1977, AND BELIEVES BOTH SIDES WILL HAVE TO SERIOUSLY CONSIDER INTERIM ARRANGEMENTS FOR JAN-FEB AND FOR THE PERIOD FROM MARCH 1 UNTIL BOTH COUNTRIES HAVE COMPLETED THEIR INTERNAL APPROVAL PROCEDURES. (IN

RECENT CONVERSATION WITH JAPAN COUNTRY DIR SHERMAN, FONOFF
NORTH AMERICAN BUREAU DIRECTOR SPOKE OF HAVING AGREEMENT
READY TO SUBMIT TO DIET IN JANUARY OR FEBRUARY--A PERIOD
WHEN DIET IS COMPLETELY PREOCCUPIED WITH BUDGET DEBATE.)
ONCE THEY HAVE AGREED TO THE LEGAL CONCESSIONS NECESSARY
FOR A FORMAL AGREEMENT JAPANESE WILL EXPECT CONCESSIONS
FROM U.S. IN ORDER TO CONCLUDE INTERIM ARRANGEMENTS WHICH
WILL NOT REQUIRE THEIR RECOGNITION OF U.S. JURISDICTION,
PERMITS OR FEES, ALL COMMITMENTS WHICH THE DIET HAS TO
RATIFY.

12. SALMON: GOH HAS CONCLUDED THAT U.S. LAW PRESENTS
SUCH DIFFICULT PROBLEMS FOR SALMON THAT A SEPARATE
AGREEMENT WILL HAVE TO BE MADE. IT BELIEVES U.S. IS
ALSO THINKING ALONG THESE LINES.

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